IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Writ Petition Nos.12781 to 12783 of 2011
and M.P.Nos.1, 1 and 1 of 2011

M/s.Sri Kanniamman Cotton Textiles (P) Ltd.,
Kolathu Thottam,
Devarayampalayam,
Rakkiapalayam (Post)
Avinashi. ...Petitioner in the above W.Ps

Vs.

The Assistant Commissioner (CT)(FAC)
Avinashi Assessment Circle,
Avinashi. ... Respondent in the above W.Ps

Prayer: PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandmus calling for the records of the respondent in his proceedings in TNGST 2080829/2000-01,2001-02 and CST 294964/2001-02 quash the proceedings dated 31.03.2011 issued therein and further direct the respondent to issue summons to the Central Excise Department under Rule 47 of the TNGST Rules for production of documents before passing order of assessment.

For Petitioner : Mr.A.R.Karthik Lakshmanan

For Respondent : Mr.V.Haribabu,
Additional Government Pleader

COMMON ORDER

Three assessments are impugned in this Writ Petition relating to the period 2000-01 and 2001-02 (TNGST) and 2001-02 (CST). The impugned orders referred to revision notices as well as a subsequent pre-assessment notice are proceed on the basis that no objections have been filed by the petitioner and no books of accounts produced for final verification. In the order of assessment for the period 2001-02 dated 31.03.2011, the Officer notes that the petitioner had represented that the books were unavailable for production since that had been seized by the Customs and Central Excise Department and hence that they were not in a position to produce the same. Thus the Commercial Tax assessment has been proceeded with by the Officer on the basis of available materials and record.

2. The prayer of the petitioner is to the effect that the Assessing Authority may be directed to issue Summons in terms of Rule 47 to the appropriate officials in the Customs/Central Excise Department and direct them to supply copies of the seized documents.

3. This prayer may be considered and granted in the light of Rule 47 that empowers an Officer of the Commercial Taxes Department, not lower in rank than an Assistant Commercial Tax Officer, to issue Summons for the production of a document or appearance of any person in Form XII of the Tamil Nadu General Sales Tax Rules, 1959.

4. Form XII prescribes the form of Summons under the Tamil Nadu General Sales Tax Rules, the Summons being to either appear in person and/or to produce documents. The appropriate Officer may call upon any person to give evidence or to produce documents that are required with reference to an enquiry in terms of the Tamil Nadu General Sales Tax Act. Hence, and as confirmed by Mr.Haribabu, learned Additional Government Pleader, the entitlement of an official to call for attendance or production of documents from the Customs/Central Excise Department, is not in question.

5. In the aforesaid circumstances and also seeing as no opportunity of personal hearing has been afforded to the petitioner prior to completion of assessments, the impugned orders of assessment are set aside. The petitioner will appear before the Assessing Authority on Wednesday, 06th November, 2019 and furnish the requisite details of the officials in whose possession the books of accounts are to the Assessing Authority and no further notice need be issued to the petitioner in this regard. The Assessing Authority shall take necessary steps thereafter to issue the summons in Form XII for production of requisite documents, upon payment of necessary charges in this regard by the petitioner.

6. Upon receipt of the copies of the requisite documents from the Customs/Central Excise Department and after hearing the petitioner, orders of assessment de novo shall be

passed by the Assessing Authority. This exercise shall be completed within a period of three (3) months from 06.11.2019.

7. These Writ Petitions are allowed in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)(FAC)
Avinashi Assessment Circle,
Avinashi.

+1 cc to M/s.AL.Ganthimathi,Advocate Sr.No. 87654
+1 cc to The Special Government Pleader, Sr.No.87868

AKM/25.10.19/3P-4C /

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